

## HOUSE ETHICS COMMITTEE

### MINUTES

(Approved by the Committee)

February 4, 2011

Capitol Bldg. (Room East Wing 40), Boise, Idaho

In attendance were Chair Representative Thomas Loertscher, Vice-chair Representative Wendy Jaquet, Representatives Bert Stevenson, Dell Raybould, Elaine Smith, Rich Wills and Bill Killen. Legislative Services Office staff present were Jeff Youtz and Charmi Arregui.

Also in attendance were: Assistant Chief Deputy Attorney, Brian Kane; Representative Eric Anderson; Representative Phil Hart; Rick Naerebout; Bob Naerebout; Tina Jensen, KIVI-TV; Seth Ogilvie and Kara Veit, IPTV; Amir Eslami; Steve Leroy; Dave Goins, Idaho News Service; and Shannon Hohl.

**Chairman Loertscher** called the meeting to order at 8:00 a.m. and **Representative Raybould** moved that the minutes from the January 12, 2011 meeting be approved, seconded by **Representative Jaquet**, and the motion passed unanimously by voice vote.

**Representative Killen** moved that the House Ethics Committee now meet in executive session pursuant to House Rule 57 for the purpose of conducting a preliminary investigation of an ethics complaint against a member under House Rule 76. He said that this executive session was called at the request of Chairman Loertscher. The motion was seconded by **Representative Stevenson**, and a roll call vote was called for by **Chairman Loertscher**. The roll call vote passed unanimously with 7 “ayes” and 0 “nays.”

**Chairman Loertscher** asked **Assistant Chief Deputy Attorney, Brian Kane**, to remain with the members. Everyone else left the committee room and the doors were secured at 8:05 a.m. Within the executive session, the committee conducted its preliminary inquiry of the following ethics complaints, which were filed pursuant to House Rule 76:

1. Complaint against Representative Anderson;
2. Third complaint against Representative Hart;
3. Second complaint against Representative Hart.

Following this inquiry, the committee adjourned from executive session. According to **Mr. Kane**, no final action, decision, vote or official action was taken within this executive session.

**Chairman Loertscher** reconvened the open meeting at 9:00 a.m., but immediately went at ease to await **Representative Hart’s** arrival, and the open meeting then reconvened at 9:25 a.m.

**Chairman Loertscher** said the first matter for the committee was the complaint against **Representative Anderson**. **Representative Raybould** moved that the complaint against **Representative Anderson** be dismissed. He said that having reviewed the complaint and having done research and background on the complaint, he found the complaint to be unfounded and frivolous. The motion was seconded by **Representative Jaquet** and the motion passed unanimously by voice vote.

**Chairman Loertscher** then informed the committee that the next matter was the third complaint against **Representative Hart**, this one filed by Mr. Griffiths. **Representative Killen** moved that the third complaint against **Representative Hart**, filed by Mr. Griffiths also be dismissed, as being without foundation and frivolous. The motion was seconded by **Representative Wills** and the motion passed unanimously by voice vote.

**Chairman Loertscher** then took up the second complaint against **Representative Hart** and invited **Representative Vito Barbieri** to address the committee. **Representative Barbieri** began by stating that, as a freshman, he wasn't here to lecture the committee, but said he wanted to point out several issues. From his legal perspective, recognizing the legal situation present here, he said that they were certain there were going to be other complaints still coming against **Representative Hart**. His concern was, he said, that if this process continues, **Representative Hart** would find himself continuing to battle these issues as this session goes on. He wanted to be clear about the process, questioning whether the process of Rule 76 was going to be cleaned up to make it simpler for everyone to follow and recognize, with regard to procedure. If someone has a complaint about an incident that occurred fifteen-years ago in any legislator's life, is there a way to deal with that, with some benefit of certainty, this being his only concern.

**Representative Jaquet** commented that **Representative Barbieri's** request was not the charge of this Ethics Committee, adding that the Speaker and leadership team were looking at the rules to possibly make them more clear, with the participation of House members. She then asked for clarification on his reference to "we." **Representative Barbieri** answered that he was here with **Representative Hart**, saying that they had discussed this issue for quite some time in terms of issues presented here. "We" means "those of us who are concerned about the process, including **Representative Hart**."

**Chairman Loertscher** apologized to the committee and to **Representative Hart** in that during this process, the committee had been feeling their way a great deal, and that it had been his desire that the committee not act hastily. He wanted the process to be done in a thoughtful manner, and admitted that they had not followed the process with great exactness, acknowledging how difficult this has been for everyone, trying to get it done right. **Chairman Loertscher** expressed his regrets, admitting he had lost much sleep over these issues, wanting desperately to get them resolved. If the process had not been followed, as some think it should have been, with regard to his role as Chairman, he said "I could have done better with more foreknowledge, but we've been feeling our way trying to decide how to do this." He then invited **Representative Hart** to address the committee.

**Representative Hart** thanked him and said that, unfortunately, he felt that he had become an expert on Rule 76, and he did not want to be. He did not want his knowledge of this rule to be a benefit in a possible fourth complaint being prepared and that he expected would be sent to this committee. This very much concerned him, he said, and in becoming knowledgeable about Rule 76, he admitted there were some things he could have done differently that would have expedited the process. He expressed appreciation for the Chairman's statement, admitting that the same applied to him. He said he could have helped the committee more to expedite this along, and he apologized to the committee. He then expressed concern that if this process were to continue on, it would continue to be a huge distraction to his status as a lawmaker, about which he is passionate and enjoys. He said he hoped to get back to being a lawmaker, so as to better serve his constituents, and he expressed hope that everyone could get back to work. If **Representative Hart** could expedite this process, to end things in this morning's meeting, he said he would be willing to step down as Vice Chairman of the House Transportation and Defense Committee. He said he hoped that this might allow everyone to focus on their legislative work for the state and for their constituents.

**Representative Jaquet** thanked **Representative Hart** for being present, adding that this Ethics Committee began in July, 2010, stating that she wished he had been here earlier. She said she had not been on the House Floor the day prior, to hear his statement to the entire body, but had looked at it on video prior to this meeting. **Representative Hart**, she said, had apologized then for the length of time this had taken, and the fact that he had not given the committee as much help as they needed, which might have been helpful, and that everyone was tired. One of the problems, she commented, is how **Representative Hart's** actions and lack of forthrightness with the committee have reflected badly on the other 104 legislators, asking him if he had reflected about this and asked for his comments.

**Representative Hart** responded by saying that this had been a learning process for him and, fortunately, there have not been many ethics complaint processes in the Legislature, the most recent one which allowed him to navigate through, given the mistakes he saw, in 2005 in the Senate. He reiterated again that it had been a learning process, and that he did not want to be an expert on Rule 76, and if he could turn this clock back six months and do things differently, he said he would do things differently. He apologized for the part that he drug out, through his actions.

**Representative Jaquet** asked **Representative Hart** if he understood that his actions and how this has played out in the media, accurately or inaccurately, have really reflected badly on the entire House body. **Chairman Loertscher** interceded to say: "I think he has rather indicated that, but you are welcome to answer." **Representative Hart** responded that the thing he thought he was doing correctly was to not fight this issue in the media, but to remain relatively silent, and wait for his opportunity before this committee to answer the complaints. Some misconceptions were repeated over and over again, he believed, which contributed to this, and he expressed hope there were not more complaints. He said he believed he should have been more public in not correcting some misconceptions, hoping that some got corrected in this committee.

**Mr. Killen** said that he had listened to **Representative Hart's** "mea culpa" on the House floor the day before this meeting, and he was glad to hear **Representative Hart** say that if he could go fifteen years back, he would make different choices, and he asked if he was willing to expand on that. **Representative Hart** answered that one of his concerns was that what has happened here could have a chilling effect on people who might want to run for office in the future. He feared that this process might change the criteria for what it takes to be a legislative candidate, including having a perfect past; he admitted he had made mistakes in his past. He offered to have a cup of coffee with **Representative Killen** to talk about fifteen years ago. He reiterated his concern that there will be people who may not run for public office due to not having a pristine past, adding: "I do not, as everyone knows."

**Representative Stevenson** questioned a statement made earlier by **Representative Hart** about the fact that if nothing more was done, he would be willing to step down as Vice Chairman of the House Transportation and Defense Committee, asking for elaboration on that or if he meant it just as spoken. **Representative Hart** said that, as he understood Rule 76, there are choices before the committee, one being to dismiss the complaint and then the committee would be done, the work of the committee would be over, and that could happen this morning. **Representative Hart** said there are other options, i.e. taking an action to the floor of the House, and he said he would rather have the committee end the process here at this meeting; his offer to step down, he hoped, would motivate the committee to end it here this morning. **Representative Hart** added that whatever happens is the committee's decision.

**Representative Wills** asked for clarification whether **Representative Hart** was asking that no further action be taken from the committee, if he steps down, or was he willing to accept whatever the committee is willing to do and, in that process, was he also willing to step down as Vice Chairman. **Representative Hart** answered: "I don't have a response to that. The committee is going to do what the committee is going to do. It is your decision. I can't affect what the committee does." **Representative Wills** said the reason he asked his questions was that it's important as to what the committee does, as to what it is that **Representative Hart** is accepting as to the responsibility of his actions. He affirmed that the committee will do what they will do, but was **Representative Hart** asking the committee to be very careful in what the committee considers and what they do. If **Representative Hart** voluntarily does step down, **Representative Wills** had some trepidation because he wants to make sure that his own decision is without concern regarding other issues. **Representative Hart** answered: "I think the committee, and rightfully so . . . this has been a weary process for everybody and I think the committee wants to move on to other things. I have to say that I'm in a bit of a different place, because I know there is another complaint out there that you haven't seen. I haven't seen it either, and I don't know what the issues are, but I'm concerned about the process getting reinitiated because this would be the fourth complaint. How long can this go on and how many times might I be standing here . . . and what will be left of my work here if I am continually down here with a fourth complaint."

**Representative Jaquet** asked for clarification also on what she thought **Representative Hart** said about voluntarily stepping down as Vice Chairman of the House Transportation and Defense Committee, if nothing goes to the House floor. **Representative Hart** said that he was just hoping that the process would end here in this committee meeting this morning. **Representative Jaquet** said: “Are you saying that if something were to happen on the House floor, you would not voluntarily step down as Vice Chairman?”

**Chairman Loertscher** explained that the process, as he understood it, was that if this committee recommends to the Speaker that, for example, **Representative Hart** be taken off as Vice Chairman, then the Speaker could go to the Thirteenth Order of Business, make the reassignments on that committee, and that would be the end of it, believing that no further action would be needed by the legislators on the House floor. On the other hand, he said, it depends upon what the committee recommends as to whether there is a vote of any kind on the House floor.

**Representative Hart** said that he was confirming to the committee that he was considering the action of voluntarily stepping down as Vice Chairman of the House Transportation and Defense Committee as having already happened in this committee this morning, so that the committee can do what it wants to do.

**Representative Elaine Smith** asked about whether a fourth complaint had come forward to this committee and **Chairman Loertscher** replied: “Not that I am aware of.” He went on to add that he believes that there are others who may want to continue pursuing complaints, but the difficulty lies in the rehashing over and over the same complaints, to which this committee can put an end. Everything that the committee has considered thus far is over and done with, he said, which he believes can give closure to this process. Thus far, he said he had only heard talk of a possible fourth complaint.

**Representative Wills** commented that what the committee members had observed on February 3rd (apology by Representative Hart to House members) and today (Representative Hart voluntarily stepping down as Vice Chairman of the House Transportation & Defense Committee) was a huge concession by **Representative Hart**. He added that during this very long, drawn-out process that most members do not have a totally pristine past and that things done by many members could be somehow construed as negative. He said that the committee had looked at the totality of what had occurred with regard to **Representative Hart** and, especially in the last two days, he believed that there had been a great deal of resolution. Whatever a fourth complaint might involve, that would be left to the Speaker to deal with or to decide how to resolve. Having said that, **Representative Wills moved that with (regard to) all of the things that have occurred at this point in time, that no further action be taken and the second complaint should be dismissed against Representative Hart.**

**The motion was seconded by Representative Raybould and he included in his second that the Ethics Committee’s report to the Speaker include that Representative Hart had**

**voluntarily withdrawn himself as Vice Chairman of the House Transportation & Defense Committee and that this committee had accepted that withdrawal.**

**Chairman Loertscher** confirmed that would be the course of action, if this motion were to pass. **Chairman Loertscher asked for a roll call vote and the motion passed unanimously with seven “ayes” and no “nays.”**

**Chairman Loertscher** ended by saying that a draft recommendation to the Speaker would be drawn up, adding that he hoped this committee was done with its work, and the meeting was adjourned at 9:53 a.m.

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The Ethics Committee met briefly on April 6, 2011, at 11:45 a.m. solely to approve the above minutes. **Representative Wills moved that the minutes from February 4, 2011 be approved, seconded by Representative Raybould and the motion passed unanimously by voice vote.**

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